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REMARKS/ARGUMENTResponse to restriction requirement

Applicant gratefully acknowledges the withdrawal of the restriction requirement.

Rejection Under 35 U.S.C. § 102

The Examiner rejects claims 39-41, 44-46, 48, 50, 53-55, 56, 58, 60, 62, and 64-66 under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,258,196 to Suzuki ("Suzuki").

-The Examiner has not established a *prima facie* case of anticipation over Suzuki

Claims 39, 54, and 66 have been amended.

In order to establish a case of *prima facie* anticipation of the amended claims over Suzuki, the Examiner must establish that Suzuki discloses every limitation of the amended claims either explicitly or inherently. *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1346, 51 USPQ2d 1943, 1945 (Fed. Cir. 1999).

-The Examiner has not pointed to a teaching in Suzuki of the claimed "continuous nonwoven substrate supporting said absorbent layers" and/or "absorbent layers . . . spaced apart...to provide exposed nonwoven surface sections of said nonwoven substrate between absorbent layers."

The subject claims have been amended to more clearly point out and highlight certain distinctions between the claimed invention and the cited prior art. The Examiner has not established a case of *prima facie* anticipation of the pending claims because the Examiner has not pointed to a teaching of "a continuous nonwoven substrate supporting said absorbent layers; wherein said absorbent layers are spaced apart from one another to provide exposed nonwoven surface sections of said nonwoven substrate between absorbent layers." Claim 39, emphasis added. Claims 54 and 66 include similar limitations.

Suzuki relates to a "sintered porous composite sheet having a multilayered structure" (Suzuki, col. 1, ll. 6-7) which "[a]t its basic level, comprises two bonded porous layers." Suzuki, col. 3, ll. 18-20. Suzuki describes:

a sintered porous composite sheet preferably [having] A/B component layers in which the A-component layer is easily fusible and the B-component layer is more thermally stable than the A-component layer. The layers are preferably sintered

together. When the A-component layer and the B-component layer are sintered together to produce the A/B component layers, the easily fusible properties of the A-component layer and the relatively high thermal stability of the B-component layer are realized.

Suzuki, col. 1, ll. 66-col. 2, l. 8.

The Examiner points to Figure 8 as teaching that "[t]he composite may comprise longitudinally spaced parallel lines or pleats, creating wicking zones between the absorbent layers and exposing the underlying substrate." Office action, page 3.

Applicants submit, however, that the structure illustrated in FIG. 8 (as well as in FIGS. 10, 32, and 33) includes a B-layer that is not of a nonwoven material, nor provides a continuous nonwoven substrate supporting the absorbent layers. Although the structures presented in FIGS. 8 and 10 includes a sheet of B-component layers supporting discrete A-layers 204, 205, any space exposed between the A-layers 204, 205, are sintered areas 404, 405, of the B-component layer. Such an exposed sintered area 404, 405 is literally and functionally different from "exposed nonwoven surface sections providing wicking zones between said absorbent layers", as required by claim 39. Furthermore, the underlying sheet of B-component layer 304, 305 in FIGS. 8 and 10 do not appear to be a continuous substrate supporting the absorbent layers due to the interruptions of sintered areas 404, 405 between A-layers 204, 205.

Accordingly, the multi-layer structures presented in Suzuki do not teach or suggest the absorbent article or absorbent core of the claimed invention. It would appear also that any modification of the Suzuki structures to incorporate one or more of the layers of the claimed invention would amount to a significant modification of the Suzuki teaching. Even if a working product may be produced from a modification, the modification itself would appear to be inconsistent with the purpose and objective of the Suzuki reference. The claimed invention is, therefore, not obvious in view of the Suzuki reference, individually, or in combination with any of the cited references.

-The Examiner also has not pointed to a teaching of an "absorbent core" meeting every limitation of claims 39, 54, and 66

The Examiner also has not established a case of *prima facie* anticipation of claims 39, 54, and 66 because the Examiner has not pointed to a teaching in Suzuki of an "an absorbent composite including a plurality of absorbent layers of hydratable fine fibers in

the form of microfibril obtained from cellulose or a derivative thereof, and super absorbent polymer (SAP) particles bonded together by said hydratable fibers.”

Suzuki states that “suitable, slightly or nonfusible materials can be selected from the group consisting of cellulose, polyurethane, polyvinyl alcohol, polyphenol, polyacrylonitrile, polymeric polyester and nylon materials and derivatives thereof, which have a relatively higher melting point than the A-component.” Suzuki, col. 3, ll. 32-39 (emphasis added). Suzuki therefore does mention cellulose as one of several possible materials for use as the “B-component,” or the “nonfusible material.”

The Examiner argues that “Suzuki discloses an absorbent composite comprising an absorbent layer having cellulose microfibrils (A/B, col. 6, lines 39-52), super absorbent polymers (col. 21, lines 35-50), and a nonwoven substrate supporting said absorbent layer(B).” Office action, page 2. The only teaching to which the Examiner points in Suzuki related to super absorbent polymers is in col. 21.

First of all, the material tested in Suzuki col. 21 is described as having an “A-component layer [which] comprises a spunbond nonwoven fiber . . . having a biocomponent fiber of PET as a core and PE as a sheath.” Suzuki, col. 21, ll. 7-10 (emphasis added). The “B-component layer” also comprises “a card web . . . having a biocomponent fiber stable . . . of PET as a core and PE as a sheath.” Suzuki, col. 21, ll. 17-19 (emphasis added). The Examiner has not pointed to a teaching that the absorbent material tested at col. 21, ll. 46-52 even comprises the claimed “absorbent composite including a plurality of absorbent layers of hydratable fine fibers in the form of microfibril obtained from cellulose or a derivative thereof.”

The Examiner certainly has not pointed to a teaching or suggestion that the material tested at Suzuki col. 21 comprised “super absorbent polymer (SAP) particles bonded together” by hydratable fibers “in the form of microfibril obtained from cellulose or a derivative thereof.” Claim 39.

Suzuki does mention “powdered polymer having high absorbing property.” However, the powdered polymer is used in conjunction with an “A-component” comprising a “carded web compris[ing] a high contractile PE/PP biocomponent fiber.” Suzuki, col. 19, ll. 10-13 (emphasis added). This “carded web” is subjected to a series of processes to produce “[a] multi-layer sheet having the folded surface . . . [having] both

voids due to a large fold structure thereof as well as absorbing characteristics along the sintered surface.” Suzuki, col. 19, ll. Suzuki teaches that, “[w]hen these two characteristics are utilized, a powdered polymer having a high absorbing property can be relatively stably stored in a large amount to about 20 g/100 cm² in the fold loop.”

Suzuki, col. 19, ll. 61-64.

Suzuki goes on to explain:

[A]s shown in FIG. 31(b), a highly absorbent powdered polymer 72 is introduced into the hollows of the multi-layer sheet 71. As shown in FIG. 31 (a), the multi-layer sheet 71 has a loop-shaped surface formed during the above-described first contraction treatment. Since the powdered polymer 72 may easily escape the hollows, a further contraction is necessary while the surface is subjected to a sintering treatment. The space between the adjacent crests is narrowed, and the polymer particle 72 is locked in the storage sites. If necessary, the powdered polymer 72 may be more stably locked in place by absorbing a small amount of moisture. Alternatively, the surface of the fold sheet may be coated with a tissue, a film or the like, to further lock the powdered polymer 72 in place.

Suzuki, col. 19, 66 - col. 20, l. 12.

The Examiner has not established that introducing a “highly absorbent powdered polymer 72 . . . into the hollows of the multi-layer sheet 71” of Suzuki’s “**high contractile PE/PP bicomponent fiber**” [Suzuki, col. 19, ll. 10-13 (emphasis added)] is a teaching of an absorbent composite including “a plurality of absorbent layers of hydratable fine fibers in the form of microfibril obtained from cellulose or a derivative thereof, and **super absorbent polymer (SAP) particles** bonded together by said hydratable fibers.” Claims 39, 54, and 66.

-Claims 47, 59 and 69

The Examiner certainly has not pointed to a teaching in Suzuki of “an absorbent composite including a plurality of absorbent layers of hydratable fine fibers in the form of microfibril obtained from cellulose or a derivative thereof, and super absorbent polymer (SAP) particles,” which have “**free swell capacities of over 40 g/g.**” Claims 39, 54, and 66.

It is the claimed limitations which produce the absorbent layer “adapted to gel block upon wetting so as to be substantially impervious but breathable when dry.” Claims 47, 59, and 69. The Examiner has not pointed to the limitations of the claims,

and has not pointed to an absorbent layer which is "adapted to gel block upon wetting so as to be substantially impervious but breathable when dry." Claims 47, 59, and 69.

-Conclusion on Anticipation

Other dependent claims include additional limitations. The Examiner also has not pointed to a teaching or suggestion of these additional limitations in Suzuki. For all of the foregoing reasons, the Examiner has not pointed to a teaching in Suzuki of every limitation of claims 39, 54, and 66, or claims depending therefrom, and has not established a case of *prima facie* anticipation of the claims. Applicant respectfully requests that the rejection of claims 39-41, 44-46, 48, 50, 53-55, 56, 58, 60, 62, and 64-66 under 35 U.S.C. § 102(e) be withdrawn.

Rejections Under 35 U.S.C. § 103

-Rejection of claims 42, 52, 56, 59, and 67

The Examiner rejects claims 42, 52, 56, 59, and 67 as obvious under 35 U.S.C. § 103(a) over Suzuki.

-Response

In order to establish that claims 42, 52, 56, 59, and 67 are *prima facie* obvious over Suzuki, the Examiner must point to two things in Suzuki, and not in the applicant's disclosure--(1) the suggestion of the invention, and (2) the expectation of its success. *In re Vaeck*, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991). The Examiner has not met this burden.

Claims 42, 52, 56, 59, and 67 depend, directly or indirectly, from claims 39, 54, and 66 and are allowable for the same reasons. For the reasons discussed above, the Examiner has not pointed to a teaching or suggestion of the "invention" in Suzuki.

The Examiner cannot establish a case of *prima facie* obviousness by merely arguing that Suzuki could be modified to meet the limitations of the claims. In order to establish a case of *prima facie* obviousness, the Examiner has the burden to point to a teaching or suggestion in the references themselves that it would be desirable to make the modification(s) required to produce the claimed method or composition. *In re Brouwer*, 37 U.S.P.Q.2d 1663, 1666 (Fed. Cir. 1995). The Examiner has not met this burden.

For the foregoing reasons, the Examiner has not established a case of *prima facie* obviousness of the pending claims over Suzuki.

-Claims 42, 56, 59, and 67

The Examiner admits that "Suzuki fails to disclose [] super absorbent polymers [that] exhibit gel blocking," as specified in claims 42, 56, 59, and 67. Nevertheless, the Examiner contends that "Suzuki discloses the polymeric materials are adapted to swell such as in Fig. 16b." The Examiner argues that "Suzuki further discloses that the 'waves' are hydrophobic which inherently creates a water impervious area when the polymeric materials swell." The Examiner concludes that "[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the composite with a low crosslinked material to create [a] liquid impervious material, since Suzuki teaches creating a liquid barrier due to the swelling of the absorbent particles." Office action, page 4.

Claims 42, 56, 59, and 67 either directly or indirectly depend from claims 39, 54, and/or 66, and are allowable for the reasons given above.

With respect to the "waves" in Suzuki, Applicant assumes that the Examiner refers to Suzuki, col. 18, ll. 41-col. 19, l. 3. The Examiner has not established that the "polymeric materials" which the Examiner contends "are adapted to swell" are "particles."¹ The Examiner certainly has not pointed to a teaching or suggestion that Suzuki's "waves" comprise "particles" comprising "a low cross link SAP adapted to gel block upon wetting." Claim 42.

The Examiner therefore has not pointed to a teaching or suggestion of the invention of claims 42, 56, 59, and/or 67 in Suzuki. Nor has the Examiner pointed to a teaching or suggestion in Suzuki or elsewhere that would motivate a person of ordinary skill in the art to modify Suzuki in the manner required to produce the claimed absorbent composite.

¹ The specification explains that "[p]article state SAP employed in some of the embodiments of the invention will be smaller than about 500 μ in particle size but preferably under 400 μ ."

Rejection of Claims 43, 47, 57, 68, and 69 under 35 U.S.C. § 103

The Examiner rejects claims 43, 47, 57, 68, and 69 as obvious over Suzuki in view U.S. Patent No. 5,403,870 to Gross ("Gross"). The Examiner also rejected claims 49, 51, 61, 63, and 70, apparently also over Suzuki in view of Gross.

Response

The Examiner has not pointed to a teaching or suggestion in Gross of "a continuous nonwoven substrate supporting said absorbent layers; wherein said absorbent layers are spaced apart from one another to provide exposed nonwoven surface sections of said nonwoven substrate providing wicking zones between absorbent layers." Nor has the Examiner pointed to a teaching or suggestion Gross of "an absorbent composite including a plurality of absorbent layers of hydratable fine fibers in the form of microfibril obtained from cellulose or a derivative thereof, and super absorbent polymer (SAP) particles bonded together by said hydratable fibers."

The Examiner has not pointed to a teaching or suggestion in Suzuki, Gross, or elsewhere that would motivate a person of ordinary skill in the art to modify Suzuki in the manner required to produce a disposable absorbent article meeting the foregoing limitations. The Examiner therefore has not established a case of *prima facie* obviousness of claims 43, 47, 49, 51, 57, 61, 63, 68, 69, and 70 over Suzuki in view of Gross.

Dependent claims 43, 47, 49, 51, 57, 61, 63, 68, 69, and 70 also include additional limitations. The Examiner also has not pointed to a teaching or suggestion of these additional limitations in Suzuki or in Gross.

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CONCLUSION

In view of the above amendments and remarks, Applicants respectfully request reconsideration and allowance of the pending claims. No fee is believed to be due at this time. If the appropriate Petition for an Extension of Time is not attached hereto (or any other Petition required of the application), this statement shall serve as Applicants' Petition to the U.S.P.T.O. The Commissioner is hereby authorized to charge any fees in connection with this paper, or to credit any overpayment, to Deposit Account No. 50-0997 (AHP-P01880US2) maintained by Paula D. Morris & Associates, P.C. d/b/a Morris & Amatong, P.C.

The undersigned is available for consultation at any time, if the Examiner believes such consultation may expedite the resolution of any issues.

Respectfully submitted,

Date:

11/24/06

By

RG A N
Alberto Q. Amatong, Jr.
Registration No. 41,850
Morris & Amatong, PC
10260 Westheimer, Suite 360
Houston, Texas 77042-3110
Telephone: (713) 334-5151
Facsimile: (713) 334-5157

ATTORNEY FOR APPLICANTS